



POLICE DEPARTMENT CITY OF NEW YORK

February 26, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Bekim Kalicovic
Tax Registry No. 936834
13 Precinct
Disciplinary Case No. 2015-13360

Police Officer Brian Behan
Tax Registry No. 940967
120 Precinct
Disciplinary Case No. 2015-13363

Police Officer Michael Tarangelo
Tax Registry No. 949715
120 Precinct
Disciplinary Case No. 2015-13364

Police Officer Michael Tarulli
Tax Registry No. 929239
120 Precinct
Disciplinary Case No. 2015-13362

Police Officer Richard Digangi
Tax Registry No. 944509
120 Precinct
Disciplinary Case No. 2015-13359

Charges and Specifications:

Disciplinary Case No. 2015-13360

1. Said Sgt. Bekim Kalicovic, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered the apartment numbered B without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

2. Said Sgt. Bekim Kalicovic, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered the apartment numbered A without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

3. Said Sgt. Bekim Kalicovic, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched the apartment numbered A without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

4. Said Sgt. Bekim Kalicovic, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED], wrongfully used force, in that he punched, kicked and kneed VIDO TROSSI about his body, without police necessity. *(As amended)*
P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-13363

1. Said PO Brian Behan, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED], wrongfully used force, in that he punched, kicked and kneed VIDO TROSSI about his body, without police necessity. *(As amended)*
P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-13364

1. Said PO Michael Tarangelo, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED], wrongfully used force, in that he punched, kicked and kneed VIDO TROSSI about his body, without police necessity. *(As amended)*
P.G. 203-11 USE OF FORCE

Disciplinary Case No. 2015-13362

1. Said PO Michael Tarulli, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED] wrongfully used force, in that he punched, kicked and kneed VIDO TROSSI about his body, without police necessity. *(As amended)*
P.G. 203-11 - USE OF FORCE

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

Disciplinary Case No. 2015-13359

1. Said PO Richard Digangi, on or about March 15, 2014 at approximately 17:12 hours, while assigned to the 120th Precinct and on duty, [REDACTED], wrongfully used force, in that he punched, kicked and kneed VIDO TROSSI about his body, without police necessity. *(As amended)*
 P.G. 203-11 USE OF FORCE

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.
 Civilian Complaint Review Board
 100 Church Street, 10th floor
 New York, New York 10007

For Respondent Kalicovic: Michael LaCondi, Esq. & Philip Karasyk, Esq.
 Karasyk & Moschella, LLP
 233 Broadway-Suite 2340
 New York, New York 10279

For Respondents Behan, Tarangelo, Tarulli, Digangi:
 Michael Martinez, Esq.
 Worth, Longworth & London, LLP
 111 John Street-Suite 640
 New York, New York 10038

Hearing Dates:

October 20, 2015, November 19, 2015 and January 12, 2016

Decision:

Respondent Kalicovic: Specifications 1-4: Not Guilty
 Respondent Behan: Specification 1: Not Guilty
 Respondent Tarangelo: Specification 1: Not Guilty
 Respondent Tarulli: Specification 1: Not Guilty
 Respondent Digangi: Specification 1: Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 20, 2015, November 19, 2015 and January 12, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Jeffrey Blake, Hakeem Blake, Goldie Trossi and Vido Trossi as witnesses. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Kalicovic Not Guilty of two counts of unlawfully entering an apartment, Not Guilty of an unlawful search, and Not Guilty of wrongful use of force. I also find Respondents Behan, Tarangelo, Tarulli, and Digangi Not Guilty of wrongful use of force.

FINDINGS AND ANALYSIS

At about 1700 hours on March 15, 2014, police responded [REDACTED] [REDACTED] [REDACTED]. They were responding to a 911 call from a female regarding guns inside apartment B. Respondent Lieutenant Bekim Kalicovic ("Kalicovic"), who was a sergeant at the time, and Respondent Officer Michael Tarulli ("Tarulli"), his driver, were the first to arrive. Kalicovic and Tarulli initially entered apartment A in error; once they realized their mistake, they left that apartment and entered apartment B, where they were joined by the remaining Respondents: Officers Richard Digangi ("Digangi"), Brian Behan ("Behan"), and Michael Tarangelo ("Tarangelo"). Inside apartment B, police encountered one of the tenants, Vido Trossi. Following a physical struggle with police, Mr. Trossi was arrested for Disorderly Conduct, Obstructing Governmental Administration, and Resisting Arrest. At trial, it was learned that

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

Trossi's step-daughter, Person A, was the female who had made the 911 call, presumably to get back at her father with whom she was arguing earlier that day. The Respondents, however, were unaware of the source of the call at the time of the incident.

There are several issues here. First, did the record establish by a preponderance of the credible evidence that Kalicovic unlawfully entered and searched Apartment A; I find that it did not. Second, did the record establish that Kalicovic unlawfully entered Apartment B; I find that it did not. Third, has the evidence presented proven that each of the five Respondents wrongfully used force against Trossi inside Apartment B; I find that it has not.

Apartment A

Two residents of Apartment A testified: Jeffrey Blake, and his nephew Hakeem Blake. Jeffrey Blake was inside his apartment when he saw Kalicovic (who he identified in court) and Tarulli (who he could not identify) enter with their guns drawn. (Tr. 28-30) According to Jeffrey Blake, Kalicovic asked where the guns were, and explained that there had been a call that there were guns inside the apartment; Jeffrey Blake started to reply that he did not know what the officer was talking about, when Kalicovic then asked whether anyone was in the back of the apartment. Even though Jeffrey Blake's response was that no one was back there, Kalicovic proceeded to enter each of the three bedrooms for about 10-15 seconds without consent. After hearing Kalicovic talk over the police radio about the address, Jeffery Blake clarified that this was apartment A not B. The officers then left the apartment. (Tr. 30-34, 43, 50-51)

CCRB introduced into evidence three photographs that show the outside [REDACTED] (CCRB Exs. 1-3), as well as a video apparently filmed by someone outside as police were

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

later leaving the location (CCRB Ex. 4). From the photographs, one can see that the outside entrances to apartments B and A are on opposite sides [REDACTED], which appears from the exterior to be a two-story building divided into two halves, each with a storefront on street-level and an apartment above. Jeffrey Blake testified that the outside front door to enter A was fully open when the police arrived, as was the inside apartment door. (Tr. 27, 48) From the video, one can see and hear Officer Tarulli say as he's walking by Jeffrey Blake after the incident, "When you pick your hands up to a police officer, that's what you expect." (CCRB Ex. 4; Tr. 36-37)

Hakeem Blake testified that when he arrived home that day the police already were inside the apartment. After the police left, he noticed that a bag of dirty clothes and another clothes bag that had both been inside his bedroom walk-in closet were now outside the closet. (Tr. 62, 64-65, 67, 70) However, Hakeem Blake acknowledged that when he was asked to describe what had happened that day during his CCRB interview on June 24, 2014, he did not mention that items had been moved from his closet; his explanation for this omission was that he was never specifically asked about it. (Tr. 69)

Kalicovic, who was a sergeant at the time of the incident, testified that he was responding to a call from the dispatcher for a firearm at the location. Although Kalicovic incorrectly stated in his CCRB interview that the transmission was for "a male inside the second floor going crazy with firearms," the actual words from the dispatcher were as follows: "Receiving a gun run [REDACTED] [REDACTED]. Female complainant states there are guns in her house, and she hung up."

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

Apartment B.” The dispatcher then requested a unit to back up the sergeant, and informed Kalicovic that the call-back to the complainant went to her voice mail. (CCRB Ex. 6; Tr. 198)

Kalicovic recounted how three minutes later, he and his operator, Tarulli, arrived at the location, which is in a high violence area with many shootings. (Tr. 173, 176) Kalicovic explained how initially he mistakenly believed [REDACTED] was two separate buildings, and when he saw the [REDACTED] on the awning to the right, he incorrectly concluded that was the entrance to the location which would take him to apartment B. (Tr. 174-175) Kalicovic testified that he walked up to the [REDACTED] floor, knocked and announced “police” two times, and receiving no response opened the unlocked door and entered the apartment. Inside, the sergeant explained to the two male occupants that he was there in response to a gun run, and asked to look around the apartment to make sure that no one was in need of assistance; the occupants consented, and the sergeant looked into each of the three bedrooms but did not enter any of them. (Tr. 175-178, 201-206) When the sergeant discovered that he was in the wrong apartment, he apologized and left the location. (Tr. 179)

Guidance for what constitutes reasonable conduct in this situation can be found in the Fourth Amendment. It is a basic principle of Fourth Amendment law that entry into a home without a warrant is presumptively unreasonable. This rule against warrantless entry is subject only to a few specifically established exceptions, such as where voluntary consent is granted or where “exigent circumstances” exist that justify the entry. Since there was no evidence of consent here, the issue is whether Kalicovic was justified in entering and searching under the “emergency doctrine,” as articulated by the New York Court of Appeals in *People v. Mitchell*, 39

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

NY2d 173 (1976).¹ There, the court set forth factors to consider in assessing whether this exception to the warrant requirement applies:

- (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
- (2) The search must not be primarily motivated by intent to arrest and seize evidence.
- (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

The record has not established, by a preponderance of the credible evidence, that Kalicovic entered Apt. A without sufficient legal authority. This tribunal credits Kalicovic's account that at the time he entered Apt. A, he was acting on a reasonable belief that there was an emergency situation involving guns inside the location based on the radio transmission. Even though the caller's name was not provided, the information conveyed was that the caller had stated that the guns were inside "her house", which did suggest that the caller had some basis for her information. The caller also provided a specific address with a particular apartment number. Since the caller apparently hung up abruptly and did not respond to a follow-up call from police, there was a legitimate and immediate concern for her safety. The dispatcher, herself, conveyed some urgency to the call by describing the job as a "gun run" and requesting back-up for the sergeant. As the dispatcher was broadcasting the job, Kalicovic immediately radioed in to

¹ In her closing argument, counsel for the CCRB evaluated the facts of this case based on the guidelines set forth in *People v. McBride*, 14 NY3d 440 (2010). However, the *McBride* decision deals with a situation where police are at a home prepared to arrest a particular suspect. Here, the officers were responding to a perceived emergency, and so, as this tribunal suggested to counsel at trial, the "emergency doctrine" articulated in *Mitchell* is more applicable.

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

request further details, further reflecting his sense of urgency as well. The sergeant and his partner responded immediately to the location; indeed, the duration from the initial radio call until the sergeant's transmission of "1-under" after the Trossi arrest was less than 15 minutes. (CCRB Ex. 6)

As such, there were exigent circumstances justifying Kalicovic's warrantless entry into apartment A. The sergeant did not enter the apartment with the intention of making an arrest or gathering evidence; rather, he was responding to what he reasonably believed to be an emergency situation at a precise location. See *People v. Love*, 84 NY2d 917 (1994) (police entry into hotel room in response to radio call of man with a gun inside upheld as lawful response to reasonably perceived emergency).

Further, this tribunal credits Kalicovic's explanation that he initially entered Apartment A believing it was B. It is well-settled that not every mistake by an officer constitutes sanctionable misconduct. See *Disciplinary Case No. 11941-2014* (February 2, 2015). For instance, in *Disciplinary Case Nos. 9756 2013 and 9757-2013* (June 19, 2015), there was no misconduct where officers genuinely, though mistakenly, believed they were at the correct address in response to a residential alarm. Here, though apartment B and A are part of the same structure, from the outside the building could reasonably be mistaken for two separate attached buildings, and so Kalicovic's error is understandable. Kalicovic came across as conscientious and professional on the witness stand, and this tribunal credits his genuine concern that there was an immediate need for his assistance at the location. He had a reasonable basis to enter and look around before realizing he was in the wrong apartment, and I find Kalicovic Not Guilty of Specification No. 2.

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

Similarly, CCRB has failed to prove that there was an unlawful search of the apartment. First, this tribunal is not persuaded that Kalicovic even searched the closet, in light of Hakeem Blake's failure to mention the displaced bags in his CCRB interview. But even if Kalicovic did look inside the walk-in closet, it was at most a quick look to see if anyone was hiding in there. Under the circumstances, spending 10-15 seconds checking each bedroom was reasonable and minimally intrusive. As such, I find Kalicovic Not Guilty of Specification No. 3.

Apartment B

Vido Trossi testified that at the time of the incident, he was changing clothes after being at a construction job interview earlier that day. As he was changing, he could hear his step-daughter Person A "ranting" from her bedroom about how she was going to "do them both dirty." Trossi explained that earlier that day, he had argued with Person A about hanging with the wrong crowd and using drugs instead of going to school, and threatened to kick her out of the home if that behavior persisted. When he heard his step-daughter ranting, Trossi immediately texted his wife Goldie about it. (Tr. 104-105, 130-131, 150-151) It is in this atmosphere that the police arrived at the location.

According to Trossi, he heard somebody coming up the stairs and suddenly saw Kalicovic inside the apartment pointing a gun at Trossi. Kalicovic asked where the gun was, and a startled Trossi asked the sergeant what he was doing there. Kalicovic repeatedly asked Trossi to sit down while the police investigated the call they had received that there was somebody menacing someone with a gun; Trossi stated that the sergeant's initial "demeanor was okay", but he refused to comply with Kalicovic's request. (Tr. 106, 109-110, 132-133, 152) Three or four

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

additional officers came into the apartment. Trossi testified that he told Kalicovic he could search the apartment, but as Kalicovic was walking past Trossi he punched Trossi in the face and tackled him to the ground. (Tr. 111-112, 153) On the way down, Trossi fell on top of, and destroyed, a sewing machine, which his wife described as having been attached to a table. (Tr. 82, 113) Trossi claimed that while he was down on the ground in a fetal position, he was beaten about his face and body and choked by the officers, though he did not specify which officers did what to him. (Tr. 112-115) Trossi, who estimated that he was about 6'1", 193 pounds at the time, was then taken out of the apartment by the officers and placed in the police car. (Tr. 117, 148-149) As a result of the beating, Trossi sustained a "really swollen" head and other bruising, for which he was given ice packs and painkillers at Riker's Island. (Tr. 115, 118) CCRB introduced eight photographs into evidence (collectively CCRB Ex. 5) depicting Trossi's injuries, including bruising to the side of his face and arm, though no medical records were proffered. Trossi's wife Goldie also observed the visible injuries sustained by her husband; however, she arrived after he was already handcuffed. (Tr. 76, 78-79, 101) Goldie also testified that when she left the apartment 15 minutes before the incident, both the outside door and inside door to the apartment were closed. (Tr. 73)

For the most part, Trossi was composed in giving his account of the incident. However, he became somewhat combative in answering questions about a prior arrest involving an assault on a police officer, who he described as "another corrupt cop." In that case, which occurred about four years earlier, Trossi pled guilty to a felony, though he claimed he was "forced" to do so because he was in jail on high bail. (Tr. 122-123) Trossi also admitted that he had prior misdemeanor convictions for weapons possession (where there was an allegation of menacing)

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

and endangering the welfare of a minor (for spanking his child). (Tr. 125, 129) Trossi acknowledged that he has a civil lawsuit pending against the City in connection with this incident where he is seeking one million dollars in damages. (Tr. 119, 139, 154-155)

Although this tribunal certainly is not prepared to discount the entirety of Trossi's testimony based on his prior convictions and his interest in a pending lawsuit, these are factors that impact negatively on his credibility. Indeed, some of Trossi's testimony came across as not completely truthful. He likely was more upset about his step-daughter's "do them both dirty" comment than he acknowledged, since he cared enough about it to text his wife immediately, and was already agitated by the time police arrived. His claim that he never got into a fighting stance is not credible, not just because he admittedly trains at a local boxing club, but because several of the officers present inside the apartment testified consistently about Trossi doing just that. (Tr. 134-136, 251, 283, 307) Further, this tribunal finds it unlikely that Kalicovic just punched and tackled Trossi for no reason after Trossi had just given consent to search. (Tr. 112)

Kalicovic's testimony was at odds with Trossi's on several points. Kalicovic testified that as he was walking up the stairs to the apartment, he heard "screaming and yelling" from inside the apartment. The door to the apartment was open two or three feet. Kalicovic called out "police", but received no response, so he walked into the apartment and again announced "police." (Tr. 180, 182, 212) Kalicovic testified that he first saw a young female come from the back, and then Trossi emerged from one of the bedrooms as well. (Tr. 183-184) Trossi was shirtless, and the sergeant did not see any firearm in his waistband. (Tr. 184, 214) Kalicovic informed Trossi why they were there, and a visibly upset Trossi, with fists clenched in a "fighting stance", yelled at the young female to get her mother on the phone. An irate Trossi

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

then screamed and cursed into the phone that “you did this, come over, you better get back here.” (Tr. 184-185, 215-217) Kalicovic, who patiently allowed Trossi to make that call, then informed Trossi that he needed to check the apartment to make sure that no one was hurt, but Trossi responded that he wasn’t going to allow the sergeant to go back there. (Tr. 186-189, 219)

As Kalicovic began to walk toward the back to investigate, Trossi stepped in his way; with his fist still clenched, Trossi pivoted to the side, and pulled his shoulder back slightly, as if he were about to punch the sergeant. Fearing that he was about to be hit, Kalicovic grabbed Trossi’s arm to try to take Trossi down, and the two of them fell to the ground, with Trossi grabbing onto and breaking a table on the way down. (Tr. 189-191, 221-222, 239) Other officers then helped the sergeant handcuff Trossi, who continued to struggle and resist by “kicking his legs and moving his arms and his body.” Kalicovic denied that he punched or kicked Trossi, and also stated that he did not see any of the other Respondents do so either. He explained that instead, he had the other officers help “pull his legs out to lay him flat on his stomach” in order to handcuff Trossi. (Tr. 192-194, 232) Kalicovic then walked back to the bedrooms to make sure everyone was okay. No guns were recovered from inside the apartment. (Tr. 226) At the precinct, Trossi apologized to Kalicovic. (Tr. 197)

Similarly, Respondents Digangi, Tarangelo, and Tarulli testified, essentially corroborating Kalicovic’s account of what occurred inside B. Each of them stated that the apartment door was ajar, that Kalicovic patiently explained to Trossi why they were there and tried to calm him down, and each credibly and consistently described how Trossi’s confrontational behavior caused the situation to become physical. Digangi described Trossi as “very aggressive, very hostile, violent” (Tr. 248); Tarangelo described him as “aggressive,

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

combative” (Tr. 279); Tarulli testified that Trossi seemed “very hyper” (Tr. 306); and Behan described Trossi as “very irate”. (Tr. 340). There were some discrepancies, though, in the officers’ descriptions of Trossi’s actions immediately before he was taken to the ground. Tarulli was most consistent with Kalicovic, stating that Trossi made a motion as if he was about to swing at Kalicovic. (Tr. 309) Tarangelo testified that it looked like Trossi “maybe lunged at” the sergeant. (Tr. 283). Digangi and Behan both testified that Trossi raised his hands toward Kalicovic (Tr. 252, 342).

Respondents Digangi, Tarulli, and Tarangelo acknowledged that they assisted Kalicovic in handcuffing Trossi, but denied punching, kicking, or kneeing him. (Tr. 258, 286, 311) Specifically, Digangi, who suffered a fractured thumb as he helped his sergeant try to handcuff Trossi, testified that he only grabbed Trossi’s arm, trying to get it behind his back so that he could be handcuffed. (Tr. 253-254) Tarulli testified that he fell to the ground with his sergeant and Trossi, and that he only grabbed Trossi’s legs in an effort to hold his legs down. (Tr. 309-310) Tarangelo testified that he only grabbed Trossi’s bicep and forearm, trying to get Trossi’s arm behind his back so that he could be handcuffed. (Tr. 285-286) Behan, on the other hand, testified that he remained by the door to secure the entrance, did not participate in the efforts to handcuff Trossi, and did not have any physical contact with him before he was handcuffed. (Tr. 341, 343-344)

The record has not established, by a preponderance of the credible evidence, that Kalicovic’s entry into Apartment B constituted misconduct. Again, this tribunal finds Kalicovic’s account to be consistent and credible. As discussed above with respect to apartment A, Kalicovic was responding to what he reasonably believed to be an emergency situation

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

involving guns inside a precise apartment. The screaming and yelling he heard coming from inside Apartment B reasonably heightened his concern for the safety of those inside. Counsel for the CCRB suggested that if Kalicovic really was concerned about the safety of the occupants, he would have asked the young girl he first encountered inside the apartment whether she called 911 or needed help. (Tr. 213) However, Kalicovic explained that the girl appeared very emotional and “stunned”, and his focus at that point was to see what the yelling and screaming was about. (Tr. 183) As such, Kalicovic acted reasonably in entering and looking around apartment B, and I find him Not Guilty of Specification No. 1.

Regarding the remaining charges accusing Kalicovic and the other four Respondents for wrongfully using force against Trossi, I find that the evidence has failed to prove that any of the Respondents used unnecessary force against Trossi. This tribunal is mindful that Trossi did suffer injuries during the altercation. However, there was a lack of credible proof as to how precisely these injuries occurred, whether it was from being struck by the officers, banging into the sewing machine table, or some combination thereof. Also, there was credible testimony that it was Trossi’s own conduct that caused the situation to escalate into the physical encounter that it became.

Of the five Respondents, only Kalicovic was identified by Trossi as having punched him. None of the other four Respondents was specifically identified as punching, kicking, or kneeling Trossi, and none of them acknowledged any such conduct. Respondent Behan testified without contradiction that he stood by the door and wasn’t even involved in the effort to handcuff Trossi. The other three officers each acknowledged that they took part in handcuffing Trossi, but denied punching, kicking, or kneeling the prisoner. As for Kalicovic, this tribunal credits his account of

LIEUTENANT BEKIM KALICOVIC
POLICE OFFICER BRIAN BEHAN
POLICE OFFICER MICHAEL TARANGELO
POLICE OFFICER MICHAEL TARULLI
POLICE OFFICER RICHARD DIGANGI

what occurred. The sergeant appeared genuinely concerned with making sure that there was no one inside the apartment in need of assistance. When confronted by an irate Trossi, Kalicovic patiently tried to explain the reason they were there in an effort to "defuse" the situation.

Kalicovic even called central and had the dispatcher repeat the transmission for Trossi to hear, with the hope that it would calm Trossi down. The sergeant came across as someone who was likely to have acted with the restraint he described. To the extent that he used force against Trossi in grabbing his arm and bringing him to the ground, it was only to protect himself from harm and was reasonable under the totality of the circumstances. Accordingly, I find each of the five Respondents Not Guilty of using force without police necessity.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER